

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.**

ORDER

M/s Jai Shree Enterprises, vs. Assistant Commercial Taxes
Jodhpur Officer, Jodhpur

S.B. Civil Sales Tax Revision No.601/2002 against the
judgment dated 1.5.2002 passed by the learned Tax Board,
Ajmer in Appeal No.293/96/Jodhpur.

Date of Judgment: May 2nd, 2007.

PRESENT

HON'BLE MR. PRAKASH TATIA,J.

REPORTABLE

Mr. Dinesh Mehta for the petitioner.
Mr. Sangeet Lodha for the respondent.

BY THE COURT:

This revision petition by the assessee against the order of the Tax Board order dated 1.5.2002 by which the Rajasthan Tax Board dismissed the appeal of the assessee-appellant, preferred against the order passed by the Deputy Commissioner (Appeals), Commercial Taxes, Jodhpur dated 31.3.1996 as the Deputy Commissioner (Appeals) upheld the order of the Assessing Authority dated 26.5.1995 whereby the Assessing Authority assessed the tax against appellant-assessee as Rs.1,03,344.00 and imposed a penalty under Section 16(1)(i) of Rs.1,03,448.00 and levied interest under Section 11B of the Act of 1994 amounting to Rs.62,069.00.

Brief facts of the case are that M/s Dharnendra Ice-Cream,

Ahmedabad is the manufacturer of ice-cream Go-Cool at Ahmedabad. Another is M/s Dharnendra Marketing Company, Ahmedabad which is the sole distributor for marketing the entire product of the M/s Dharnendra Marketing Company, Ahmedabad. This M/s Dharnendra Marketing Company, Ahmedabad is also placed at Ahmedabad. The petitioner-assessee M/s Jaishree Enterprises, Jodhpur was appointed by M/s Dharnendra Marketing Company, Ahmedabad as their sub-distributor for the territory of Jodhpur in the year 1990 and an agreement to this effect was signed between the M/s Dharnendra Marketing Company, Ahmedabad and the petitioner M/s Jaishree Enterprises, Jodhpur. The petitioner also placed on record the copy of the letter of M/s Dharnendra Marketing Company, Ahmedabad dated 1.5.1990 by which the petitioner-assessee M/s Jaishree Enterprises, Jodhpur was appointed distributor for the Jodhpur City and Division, as stockist for the product Go-Cool. In the said agreement one of the condition was that M/s Dharnendra Marketing Company, Ahmedabad shall supply ice-cream to the petitioner at its godown in Jodhpur. This arrangement continued till 31.3.1992 and the petitioner-assessee M/s Jaishree Enterprises, Jodhpur brought the goods within the State of Rajasthan against the Form-C till 31.3.1992 and continued to pay sales tax on the sale of ice-cream in the territory of Jodhpur.

According to the petitioner M/s Jaishree Enterprises, Jodhpur from

1.4.1992 with the opening of branches at Udaipur by both M/s Dharnendra Ice-cream Company, Ahmedabad and M/s Dharnendra Marketing Company, Ahmedabad, the situation changed. The assessee's contention is that with the opening of branch offices of M/s Dharnendra Ice-cream Company at Udaipur and further by the opening of office of M/s Dharnendra Marketing Company at Udaipur, the earlier contract between M/s Dharnendra Marketing Company, Ahmedabad and the petitioner M/s Jaishree Enterprises, Jodhpur was superseded by another agreement and M/s Dharnendra Marketing Company, Ahmedabad, by its letter dated 21.3.1992 (Annx.1) informed the assessee-petitioner Jaishree Enterprises, Jodhpur that with effect from 16.3.1992, M/s Dharnendra Marketing Company, Ahmedabad will supply the goods as ST paid goods to the assessee. By this letter dated 21.3.1992, the petitioner-assessee was further informed that tax on said material will be paid by M/s Dharnendra Ice-cream Company whose address and sales tax number which are obtained for trade from Udaipur within the State of Rajasthan are supplied to the petitioner-assessee. In the letter dated 21.3.1992, the RST Number of the M/s Dharnendra Ice-Cream Company has been shown as :RST 351/72 dated 16.3.1992 and CST Number 956/86 UD dated 16.3.1992. By another letter dated 25.3.1992 issued by the Dharnendra Marketing Company, the petitioner-assessee was intimated about opening of the branches by M/s Dharnendra Marketing Company

and M/s Dharnendra Ice-cream Company at Udaipur. In this letter dated 25.3.1992, the RST and CST of both M/s Dharnendra Ice-cream Company, Udaipur and M/s Dharnendra Marketing Company are also given.

The assessee, in these facts and circumstances, on the plea that the goods; Ice-cream "Go-Cool" manufactured by M/s Dharnendra Ice-Cream Company, Ahmedabad was transferred as branch transfer basis to its office at Udaipur. The above goods were sold by the branch office of M/s Dharnendra Ice-cream Company, Udaipur to M/s Dharnendra Marketing Company at Udaipur. At Udaipur, sales tax was paid by the M/s Dharnendra Marketing Company, Udaipur to M/s Dharnendra Ice-cream Company, Branch Udaipur. According to the assessee-petitioner, therefore, thereafter, the tax-paid goods are sold to the petitioner-assessee by the M/s Dharnendra Marketing Company, Udaipur. Since the goods in the hands of M/s Dharnendra Marketing Company, Udaipur was tax-paid and the petitioner-assessee purchased the tax-paid goods within the State of Rajasthan, therefore, the petitioner-assessee is not liable to pay the tax again as the tax can be levied on goods only once in the State of Rajasthan. Once the goods are tax-paid, the goods cannot suffer tax again in the hands of any other party, is a well settled law.

It will be worthwhile to mention here that the revenue on finding that the goods-Ice-cream Go-Cool was dispatched directly from M/s

Dharnendra Marketing Company, Ahmedabad to the assessee and this fact came in the notice of the department when the department found from the check-post, Bamanwada, the bulity sent by the M/s Dharnendra Marketing Company, Ahmedabad to the petitioner-assessee. A survey was ordered by the Assistant Commissioner, Commercial Taxes, Circle-A, Jodhpur. In the survey conducted in pursuance of the order of the Assistant Commissioner, Commercial Taxes, Circle-A, Jodhpur, on 26.4.1995, a survey was conducted in business place of the assessee, where statement of one Girish Rathore, who was manager of the assessee firm was recorded. In the statement, the manager of the assessee stated that the Go-Cool Ice-cream came from the Ice-cream Factory, Ahmedabad through vehicle straight to Jodhpur to the assessee with the bills prepared by M/s Dharnendra Marketing Company, Ahmedabad with rubber seal mentioning the name of Udaipur Branch. These bills are also in the name of assessee-firm. No bill from Udaipur was sent to the assessee firm. The revenue also found that the payment was also directly sent to the Ahmedabad firm by the petitioner-assessee. These facts were found proved from the statement of Inder Singh who is husband of the petitioner-assessee firm's proprietor. In sum and substance, the sale in question was treated as inter-state sale on the grounds that their existed (1) agreement between M/s Dharnendra Marketing Company, Ahmedabad and the petitioner for supply of Ice-

cream from Ahmedabad to Jodhpur, (2) the delivery of Ice-cream was received by the assessee in Jodhpur straight from Ahmedabad along with bills and (3) the payment of bills were made by the assessee-firm directly to M/s Dharnendra Marketing Company, Ahmedabad.

At this juncture it will be worthwhile to take note of fact that before the Assessing Authority passed the assessment order dated 26.5.1995, the Assessing Authority himself surveyed the premises of M/s Dharnendra Marketing Company, 92, Bhupalpura, Udaipur on 22.9.1994 with the assistance of local officers of the revenue and he prepared survey report, copy of which has been placed on record as Annx.2. In this survey report, the Assessing Authority himself examined the bills and the books of accounts for the years 1992-93, 1993-94 and 1994-95 and found that during these years, M/s Dharnendra Marketing Company, Udaipur sold goods of Rs.16,88,591.80, Rs.14,17,232.50 and Rs. 4,27,160.40 to M/s Jaishree Enterprises, Jodhpur. The Assessing Authority recorded the finding that the transaction was found correct from the bills and books of accounts. The Assessing Authority in this survey report recorded that the M/s Dharnendra Marketing Company, Udaipur is getting the goods-Ice-cream Go-Cool after it is being transferred from Ahmedabad by M/s Dharnendra Ice-Cream Company, Ahmedabad to its branch M/s Dharnendra Ice-cream Dharendra Marketing Company, Udaipur along with Form ST-18A and

thereafter M/s Dharnendra Marketing Company, Udaipur purchased said goods Ice-Cream Go-Cool from M/s Dharnendra Ice-Cream Company Branch, Udaipur after paying full sales tax at Udaipur and the goods in the hands of M/s Dharnendra Marketing Company was tax-paid goods and ultimately the goods in the hands of M/s Jaishree Enterprises, Jodhpur are tax paid goods.

Despite above survey report, prepared by the Assessing Authority himself, the Assessing Authority in the assessment order dated 26.5.1995 on the basis of the fact of receipt of the goods by the assessee direct from Ahmedabad and direct payment by the assessee to Ahmedabad office of the M/s Dharnendra Marketing Company, discarded its own survey report dated 22.9.1994 (Annex.2) and held that the transaction of purchase of goods from Udaipur is only a paper work and all paper work was done to avoid the payment of tax, therefore, the Assessing Authority, by impugned order dated 26.5.1995 determined the tax liability of the assessee amounting to Rs. 1,03,448/- and imposed the penalty to the extent of same amount under Section 16(1)(i) and levied interest of Rs.62,069/- under Section 11B of the Act of 1994. The assessee's appeals were dismissed by the Deputy Commissioner(Appeals) vide order dated 21.3.1996 and by the Tax Board vide order dated 1.5.2002. Hence this revision petition.

The learned counsel for the petitioner-assessee frankly admitted

that the facts in the present case are not in dispute so far as the dispatch of goods from Ahmedabad to Jodhpur directly and making of payment by the assessee directly to Ahmedabad office of the seller. According to the learned counsel for the petitioner, the petitioner was sub-dealer of M/s Dharnendra Marketing Company and was purchasing the goods against C-Form and used to pay the tax in Rajasthan till 31.3.1992. This fact more influenced the Assessing Authority and the Appellate Authorities and coupled with other facts like continuation of receiving goods directly from Ahmedabad by the petitioner at Jodhpur and making payment from Jodhpur to Ahmedabad prevailed over the authorities so much that they ignored the fact of establishing the branches of both the companies, i.e. M/s Dharnendra Marketing Company and M/s Dharnendra Ice-cream Company at Udaipur. Neither the Assessing Authority nor the Appellate Authorities have held that the branches of both the companies of Ahmedabad have not been opened at Udaipur before 1.4.1993. The facts referred above were so heavy that the three authorities without assigning any reason, discarded the actual fact of completion of sale transaction so far as it relates to the purchase of the goods by the petitioner firm within the State of Rajasthan and none of the part of transaction of sale took place at Ahmedabad. The positive finding of opening of offices of M/s Dharnendra Ice-Cream Company and M/s Dharnendra Marketing Company alone were not

ignored but the facts which were found proved from the bills and books of accounts of M/s Dharnendra Marketing Company, that too by the Assessing Authority himself, have been discarded on presumption of sale being inter-State sale, i.e. purchase of goods by the assessee from outside the State of Rajasthan.

The learned counsel for the petitioner further submitted that even assuming for the sake of argument that to avoid tax, the some dealers may indulge in paper transaction but there cannot be presumption against all the dealers like petitioner who bonafidely believed its principal seller and started purchases from within State. Whether petitioner's seller's seller that is Dharnendra Ice Cream Company got the goods as branch transfer or on sale completed at Ahmedabad, any CST has been paid or not cannot make purchase of goods by the petitioner as transaction of sale and purchase of goods by the petitioner from Ahmedabad. It is also submitted that even if the circumstances are suspicious and there are reason to draw presumption, from some facts against the assessee, then also the direct trustworthy and admitted evidence, cannot be ignored by the Assessing Authority or the Appellate Authorities and further, in the present case, all presumptions about the import of goods by the assessee from Ahmedabad stand fully disproved by the evidence collected by the Assessing Authority himself and for which he has prepared report dated

22.9.1994 (Annx.2). Therefore, in the present case, the question of law arises is whether the Assessing Authority and the Appellate Authorities committed error of law by discarding the report of the Assessing Authority (Annx.2) dated 22.9.1994 and committed error of law by drawing inference of sale in question as inter-State sale and further by holding that the goods in question were not tax-paid in the hands of the assessee.

The learned counsel for the revenue vehemently submitted that the language of the letter Annx.1 dated 21.3.1992 and dated 25.3.1992 clearly suggests that these letters were only piece of evidence created by the assessee to give colour of sale within the State of Rajasthan to avoid tax on purchase of goods as inter-State sale. It is also submitted that the other reason for creating this paper transaction was that the tax liability in the hands of the assessee was more or could have been more than the tax liability at Udaipur. The learned counsel for the revenue further submitted that the tax liability is of the dealer and in fact the petitioner-assessee itself directly purchased the goods from Ahmedabad and sold the goods within the State of Rajasthan even after 1.4.1993 and this fact is virtually admitted fact by the assessee himself. The assessee has not disputed that the goods were directly received by the assessee from Ahmedabad to Jodhpur through vehicle with relevant documents with bills in the assessee's name and with the builties and

the assessee itself paid the amount to Ahmedabad to Dharnendra Marketing Company Ahmedabad.

The learned counsel for the revenue also submitted that from the facts, it is clearly proved that no transaction took place at Udaipur and only some books were maintained at Udaipur to avoid payment of tax on purchase of goods by the assessee. The survey report dated 22.9.1994 (Annx.2) only proves the existence of books of accounts with the entries of sale and purchase of the relevant goods. Admittedly, the report itself is not correct report so far as it mentions that the goods were received at Udaipur with ST-18A form. The petitioner-assessee's representative in his statement, admitted that the Form ST-18A was received by the petitioner-assessee along with the goods at Jodhpur directly from Ahmedabad which were sent through vehicle by the Ahmedabad firm. Therefore, there are two things, one is actual transaction which took place at Jodhpur and Ahmedabad of purchasing the goods from Ahmedabad transporting it from Ahmedabad to Jodhpur, reaching it to Jodhpur in the hands of assessee directly from the seller. Not only this but admittedly no document or bill was sent by the Udaipur Branch of the M/s Dharnendra Marketing Company or even M/s Dharnendra Ice-Cream company, Udaipur to the petitioner-assessee. The person sitting at Ahmedabad selling its goods directly Jodhpur to the assessee and on printed bills and other documents, put a rubber seal mentioning the

name of Udaipur Branch is only a paper transaction. The assessee had full opportunity to place on record the evidence to prove that the assessee placed the order to Udaipur Branch of M/s Dharnendra Marketing Company or even M/s Dharnendra Ice-Cream Company but no such order has been placed on record. The letters dated 21.3.1992 and 25.3.1992 were not issued by the Branch Office of above mentioned two companies from Udaipur but they were given by the Principal office of the company from Ahmedabad. In these letters also, Ahmedabad office only stated that the Ahmedabad office will give the goods to the petitioner as tax paid. Therefore, the contention of the petitioner that the agreement dated 1.5.1990 was superseded by another agreement is on the face of it, is false. Not only this, the petitioner could not place on record any new agreement executed between M/s Dharnendra Marketing Company, Udaipur or any letter of the M/s Dharnendra Marketing Company, Ahmedabad stating therein that the goods will be sold to the petitioner only by Udaipur Branch office. The learned counsel for the revenue also relied upon the judgment of this Court delivered in the case of Commercial Taxes Officer v. Nahta Textiles Industries (121 STC 250), judgment of the Hon'ble Supreme Court delivered in the case of English Electric Company of India Ltd. v. The Deputy Commercial Tax Officer and others (38 STC 475), judgment of the Patna High Court delivered in the case of Voltas Ltd. v.

Commissioner, Commercial Taxes, Patna (133 STC 208) and another judgment of this Court delivered in the case of Commercial Taxes Officer, Special Circle-II, Japur v. Poddar Spinning Mills (67 STC 359).

The learned counsel for the revenue also submitted that inter State sale is completed when sale or purchase occasions the movement of goods from one place to another and this is statutory presumption under sub-clause (a) of Section 3 of the Central Sales Tax Act, 1956. The Explanation 1 of Section 3 of the CST Act, 1956 makes it further clear that where the goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee. In this case, the goods were delivered to carrier at Ahmedabad for transportation to Jodhpur within the State of Rajasthan from Gujarat State for delivery to the petitioner-assessee. As per sub-section (2) of Section 4 of the CST Act, the sale or purchase of goods are deemed to take place inside the State if the goods are within the State, whereas in this case, the goods were not within the State when they were purchased by the petitioner and, therefore, cannot be deemed to have been purchased within the State of Rajasthan. Not only this when it is admitted case of moving the goods from one State to another, the burden to prove that the sale is not inter State sale or the dealer is not liable to pay tax under the CST Act, 1956,

is upon the dealer claiming such non-liability of tax. For that purpose, a declaration is required to be filled in and signed by the principal office of the “other place of business or his agent or principal.” In the present case, the movement of goods from one State to another, that is from Ahmedabad to Rajasthan occasioned because of the purchase of goods by the dealer, the assessee only.

To meet with the contention raised by the counsel for the revenue, the learned counsel for the petitioner also submitted that sale or purchase of goods in the course of inter State trade or commerce has one basic ingredient of movement of goods from one State to another and it continues from the time of delivery of goods to carrier and till it reaches to the destination and the delivery is taken from the carrier but in the present case, the movement was occasioned because of placing of the order by the M/s Dharnendra Marketing Company, Udaipur to M/s Dharnendra Ice-Cream Company, Udaipur who in turn brought the goods within the State of Rajasthan from the State of Gujarat. Therefore, the transaction if any, can be termed to be the inter State trade or in the course of inter State trade or commerce, that was between M/s Dharnendra Ice-Cream Company, Ahmedabad and its branch at Udaipur if it is not a case of branch transfer, at the most, this can be a transaction of sale and purchase between M/s Dharnendra Ice-Cream Company, Udaipur Branch and M/s Dharnendra Marketing Company,

Udaipur Branch and this can be stressed to that on instructions of M/s Dharnendra Marketing Company,Udaipur, the branch office of M/s Dharnendra Ice-Cream Company, Udaipur facilitated and forwarded the order of the M/s Dharnendra Marketing Company, Udaipur to Ahmedabad and transaction between M/s Dharnendra Marketing Company, Udaipur branch and M/s Dharnendra Ice-Cream Company, Ahmedabad through the intermediary (without any connection with petitioner assessee) M/s Dharnendra Ice-Cream Company, Udaipur may be a inter State sale or sale in the course of inter State trade or commerce between M/s Dharnendra Marketing Company, Udaipur and M/s Dharnendra Ice-Cream Company, Ahmedabad. In said transaction, the petitioner-assessee is stranger. The liability of furnishing the declaration under Section 6A of the CST Act, 1956 was not of the petitioner-assessee. Not only this, the tax liability which may be under the CST Act, 1954, for that the Assessing Authority competent was the authority to assess the tax payable by the dealer under the Act of 1954 and that authority is in the State of Gujarat which is clear from sub-section (1) of Section 9 which provides that when sale of goods is affected of dealer in the course of inter State trade or commerce, the tax shall be levied by the government of India and the tax so levied shall be collected by that Government in accordance with the provisions of sub-section(2) of Section 9 of the CST Act, 1956 *in the State from*

which the movement of the goods commenced. Therefore, according to the learned counsel for the assessee, the authority in the State of Rajasthan had no jurisdiction to even examine whether it was an inter State sale and, therefore, had no authority to determine the liability of payment of central sales tax on sale if the sale took place at Ahmedabad.

I considered the submissions of the learned counsel for the parties.

It cannot be disputed that the sales tax can be recovered in the State from which the movement of goods commenced as per sub-section (2) of Section 9 of the CST Act, 1956 and it is also clear that the Assessing Authority competent to assess the tax is the authority who can assess the tax of the dealer and, therefore, in view of sub-section (1) of Section 9 read with sub-section (2) of Section 9 of the CST Act, 1956, the central sales tax could have been assessed and demanded and recovered by the Assessing Authority of the State of Gujarat, but in the facts of this case, that fact is not much relevant because of the reason that the assessee's case is that he did not import the goods from outside the State of Rajasthan, i.e. from Gujarat and purchased the goods within the State of Rajasthan, that too as tax paid goods. It is also true that the initial liability of payment of tax could have been decided by the Assessing Authority on the basis of the evidence collected by the

Assessing Authority from any source and which have been made part of the record and legally can be used against the assessee. The Assessing Authority got the information of importing Go-Cool Ice-cream by the petitioner-assessee itself directly from the Ahmedabad from the Check-post Bamanwada and found relevant builties sent by M/s Dhanendra Marketing Company, Ahmedabad to the petitioner-assessee directly from Ahmedabad to Jodhpur with ST-18A form. The Assessing Authority recorded the statement of assessee's representative who admitted the facts and those facts are that goods were directly dispatched from Ahmedabad to Jodhpur. The bills were also sent from Ahmedabad to Jodhpur directly to the assessee. The builties as well as ST-18 form were sent to the assessee at Jodhpur by the company from Ahmedabad. Those materials were in the knowledge of the assessee. The Assessing Authority discarded its own survey report dated 22.9.1994 wherein the Assessing Authority itself recorded the fact that the goods in the hands of M/s Dharnendra Marketing Company, Udaipur was tax paid goods in the State of Rajasthan. The survey report dated 22.9.1994 was discarded by the Assessing Authority in view of some trustworthy and direct evidence of movement of the goods as well as documents directly from Ahmedabad to vendor's place and on the ground that no actual event took place at Udaipur of sale and purchase of the goods. The petitioner-assessee had full opportunity to take help of the survey

report of the Assessing Authority dated 22.9.1994 and for that purpose, he could have explained the facts which are wrongly mentioned in the survey report dated 22.9.1994 and which were very relevant for deciding the event of sale and its place. In the survey report it is mentioned that the goods along with ST-18A form were received by M/s Dharnendra Ice-cream Company, Udaipur Branch and were sold to M/s Dharnendra Marketing Company, Udaipur after collecting the tax within the State of Rajasthan at Udaipur but admittedly, neither the goods nor the documents reached Udaipur in the hands of M/s Dharnendra Marketing Company, Udaipur. If this actual event did not happen at Udaipur is admitted case of the assessee then there remains only recording of fact of maintaining the books by the two registered dealers at Udaipur about the sale and purchase of the goods which in fact were never reached in the hands of the vendor M/s Dharnendra Ice-cream Company, namely, the M/s Dharnendra Marketing Company, Udaipur, then in that situation, the Assessing Authority rightly observed that the transaction at Udaipur was only paper transaction. Despite the report dated 22.9.1994, when the Assessing Authority did not proceed to drop the proceedings against the petitioner-assessee, then the assessee could have submitted cogent proof for showing the purchase of goods by any party in Rajasthan from Ahmedabad but he did not produce any evidence to this effect. Not only before the Assessing Authority but even did not choose to submit any

evidence before the first appellate authority or before the Tax Board. Not only this but the petitioner who submitted the two letters of his vendors, did not choose to submit the direct evidence of purchasing the goods by the petitioner-assessee from any of the firm from Udaipur, nor the petitioner-assessee submitted any proof of purchasing the goods by any of the registered dealer of Udaipur from Ahmedabad. The petitioner-assessee tried to heavily rely upon the rubber-seal put on the built, containing the name of the Udaipur Branch of Ahmedabad office of the vendor but it is also admitted fact that that bill was issued from Ahmedabad and not from Udaipur and was sent from Ahmedabad to Jodhpur directly to the petitioner along with the goods. Therefore, even bill was not generated from within the State of Rajasthan is also admitted fact. Then in that situation, basically the entire dispute centers round around the question of fact and that is the fact of sale and purchase of the goods, whether it was by the petitioner from vendor of Ahmedabad or vendor of Udaipur. The finding of the Assessing Authority, the Divisional Commissioner (Appeals) and the Tax Board is based on evidence, then firstly, that finding of fact cannot be interfered in the revisional jurisdiction and the revision petition can be dismissed on this ground.

The learned counsel for the petitioner tried his best to controvertd the question of fact into a question of law by submitting

that all the authorities below have drawn wrong inference from the admitted and proved facts and, therefore, it is a question of law. To demonstrate, the learned counsel for the petitioner tried his best to give several examples how sale of goods can take place. The instances are 'A' purchases the goods from the 'B' and 'A' and 'B' both are within the State of Rajasthan. 'A' purchases the goods from 'B' and 'B' himself is purchaser of the goods from out side the territory of the Rajasthan. The 'A' places order for purchase of goods to 'B' and 'B' in turn places the order to deliver the goods to "C" situated out side the territory of Rajasthan with direction to supply the goods directly to the purchaser of 'B' and thereby the goods never reaches to the hands of 'B'. In that situation, there may be agreement that 'A' will pay the sale price to the 'B's' seller i.e. to 'C' at 'C's' place and that may be because of the contract between 'B' and 'C' that 'B' on receipt of the amount from 'A', will pass on the sale price to 'B' after deducting 'C's' sale price from the amount sent by 'A' to 'C'. According to the learned counsel for the petitioner , in all these circumstances, when there is no privity of contract between 'A' and 'C' and there is a privity of contract between 'A' and 'B' for sale and purchase of the goods then the sale takes place within the territory of the State of Rajasthan and cannot be termed to be inter State sale because 'A' received the goods from out side State at the instance of 'B' and merely because 'A' paid the purchase price of the

goods to 'B' through 'C', the sale is from 'C' to 'A'. Apart from examples of sale, the learned counsel for the petitioner, pointed out towards a few circumstances which may occur in the course of trade when the commodity is perishable and because of the peculiar circumstances. For this the learned counsel for the petitioner gave example that manufacturer 'A' is situated out side the State and manufacturer's dealer 'B' is within the State but distance wise far away from the business place of 'A', the manufacturer 'A' and the dealer 'B's' buyer 'C' is situated near to the place of manufacturer 'A', then in that situation, where 'C' agreed to purchase the goods from 'B', then to complete the sale from 'A', the manufacturer situated out side the State of Rajasthan with its dealer, be in the State of Rajasthan, the goods should travel to a longer distance so as to reach in the hands of dealer 'B' to complete the sale transaction between 'A' and 'B' ? The learned counsel further submitted that there is every possibility that 'B' purchased the goods from 'A' manufacturer situated outside the State and received the goods in the city where 'B' is situated and then whether it can be demanded that the dealer purchaser from manufacturer if unloaded the goods at the place of his purchaser 'B' then only the sale will be in between the manufacturer and buyer from the dealer.

The core question is where sale took place? The sale is dependent upon the facts of contract and terms of the contract. The sale is defined

in clause (38) of Section 2 of the Rajasthan Sales Tax Act, 1994 and as per the said clause “sale” means every transfer of property in goods by one person to another for cash, deferred payment or other valuable consideration. Therefore, to find out first who is the person who sold the goods and to whom he sold the goods and other way round, who purchased the goods and from whom he purchased the goods, for this best evidence was the contract for the transaction. In present no written contract except the contract dated 1.5.1990 alone is available on record and by this the vendor sold the goods from Ahmedabad to Jodhpur to petitioner assessee. The other letters dated 21.3.1992 (Annx.1) and 25.3.1992 are information letters to the petitioner that S.T. paid goods will be supplied to the petitioner. The agreement dated 1.5.1990 was acted upon is admitted case whereas acting upon the letters dated 21.3.1992 and 25.3.1992 is disputed fact. There is material and evidence of supply of goods directly from Ahmedabad to petitioner and further there is admitted evidence of making payment for goods by the assessee to dealer at Ahmedabad from the petitioner then the petitioner cannot get any help from these letters dated 21.3.1992 and 25.3.1992 without proof that the parties in fact acted upon the letters referred.

The another controversy is where the sale takes place when the seller and buyer are placed at different places and transfer of goods by branch transfer or transfer of goods other wise than by way of sale, is claimed which is also a mode of transfer of goods from one State to

another State. For this provisions have been made under the Central Sales Tax Act, 1956 under Section 6A of the Act of 1956. Section 3 of the Central Sales Tax Act, 1956 covers the sale or purchase of goods to be deemed to take place in the course of inter State trade or commerce, if the sale or purchase occasions with the movement of goods from one State and go to another State or is affected by a transfer of documents of title to the goods during their movement from one State to another. Section 4 of the Central Sales Tax Act, 1956 provides that once a sale or purchase of goods is determined under Section 3 of the Act of 1956, the sale or purchase are to be deemed to have taken place outside all other States. Sub-section (2) of Section 4 says that a sale or purchase of goods shall be deemed to take place inside a State if the goods are within the State in the case of specific or ascertained goods at the time the contract of sale is made. We are concerned with specific and ascertained goods. In the present case, it is not in dispute that the manufacturer of the goods was situated outside the territory of the State of Rajasthan and located within the territory of the Gujarat State. It is also not disputed that goods moved from the State of Gujarat to State of Rajasthan, therefore, the entire transaction involves movement of goods from one State to another and, therefore, it cannot be disputed that the transaction involved inter State trade. The question is that whether the assessee occasioned the movement of goods from

one State to another State as provided under sub-clause (a) of Section 3 of the Central Sales Tax Act, 1956 and whether the assessee is purchaser of the goods from a dealer/manufacturer from outside the State.

As already observed, the petitioner, for the reasons best known to it, did not submit before the Assessing Authority or the Appellate Authority or the Tax Board or even before this Court any document to show that the petitioner in fact placed its order to the Dharnendra Marketing Company, Udaipur for purchase of the goods by the petitioner if it was contract with the Dharnendra Marketing Company, Udaipur and the petitioner. Therefore, there was no material available on record about the contract of purchase of the relevant goods by the petitioner assessee from the Dharnendra Marketing Company, Udaipur. When there is no written contract for purchase of the goods between the petitioner- assessee and the Dharnendra Marketing Company Udaipur, the petitioner could have produced other evidence to prove the contract between petitioner and the Udaipur Branch of seller like copies of payment receipt of tax paid by Udaipur Unit to counter the direct evidence which in absence of contract between petitioner and Udaipur Branch of seller were sufficient for holding sale/purchase by the petitioner from Ahmedabad. Then in view of the definition of sale of goods given in clause (38) of Section 2 read with the sale definition under the

provisions of Sales of Goods Act, the relevant fact for finding out the transaction of sale and purchase between the parties, delivery of goods from Ahmedabad and receiving the goods by the petitioner directly and making payment by the petitioner-assessee to the party at Ahmedabad, became decisive which constitutes transaction of sale between the petitioner-assessee and the seller at Ahmedabad. Assuming for the sake of argument that 'A' purchaser within the State of Rajasthan, can place order for purchase of goods to his seller situated within the State of Rajasthan and 'B' dealer instructs the party outside the State of Rajasthan to deliver the goods to 'A' within the State of Rajasthan, may be a transaction of sale between 'A' purchaser within the State with 'B' seller within the State, then also in the present case, the petitioner's said contract with the dealer situated within the State is not there. The letters of the Dharnendra Marketing Company dated 21.3.1992 and 25.3.1992 both were sent from Ahmedabad to the petitioner-assessee. The petitioner might have given opportunity to purchase the goods from Udaipur branch of the said company's office but that offer was acted upon by the petitioner is not proved from the material available on record and particularly, it is case of seeking presumption of sale within the State on the basis of a paper transaction which will be more clear from the documents relied upon by the petitioner and that is survey report dated 22.9.1994

Apart from above documents, the petitioner-assessee heavily relied upon the survey report dated 22.9.1994. That survey report contains absolutely wrong fact. In the survey report it is mentioned that the goods were brought within the State of Rajasthan by the M/s Dharnendra Ice-Cream Company, Branch Office, Udaipur along with Form ST 18A. Neither the goods received by M/s Dharnendra Ice-Cream Company at its Branch Office, Udaipur nor M/s Dharnendra Ice-Cream Company, Udaipur Branch received ST-18A form from Ahmedabad. The goods were directly sent to Jodhpur from Ahmedabad along with ST-18A form is fact admitted by the assessee himself. The other facts mentioned in the report dated 22.9.1994 only prove the facts of existence of books of accounts and the case of the revenue is that those books were maintained to avoid tax, without there being any actual transaction from Udaipur. The petitioner-assessee did not choose to produce any evidence to show that he ever placed the order of purchase to the M/s Dharnendra Marketing Company, Branch Office, Udaipur nor the petitioner produced any evidence of payment of tax under the RST Act by the M/s Dharnendra Marketing Company or M/s Dharnendra Ice-Cream Company, to any of the State authorities. Not only this but has not placed any evidence even before this Court. In the report dated 22.9.1994, after mentioning that the sale and bills tallied with respect to the sale of goods from Udaipur to petitioner firm but in the entire

report it is not mentioned that from the documents, this fact has been verified that the tax under the RST Act has been paid is verified from the tax payment receipt and without looking entry of the receipt of payment of tax under the RST Act, in the survey report it is mentioned that the goods in the hands of the M/s Dharnendra Marketing Company was tax paid goods. Therefore, neither the survey report dated 22.9.1994 can be relied upon nor it can help to the assessee in any manner, nor the said survey report can be any proof against direct evidence which was accepted by the Assessing Authority, the Appellate Authority and the Tax Board. The petitioner-assessee, for the reasons best known to it, did not produce any evidence of placing order of purchase by it from M/s Dharnendra Marketing Company, Branch Office, Udaipur or payment of tax by the M/s Dharnendra Marketing Company under the RST Act within the State of Rajasthan which it could have produced being sub-dealer of the M/s Dharnendra Marketing Company and further it did not produce any evidence to show that when the inter State sale or sale in the course of inter State completed and between whom it was completed.

In view of the above reasons, the Assessing Authority, the Appellate Authority and the Tax Board have carefully considered all aspects of the transaction and rightly reached to the conclusion that the goods in the hands of the petitioner-assessee were not tax paid goods.

The contention of the learned counsel for the petitioner that for subsequent years, the goods in the hands of the petitioner was treated as tax paid, is not relevant in the present case because of the simple reason that the each transaction is required to be examined separately and if the petitioner thereafter started purchasing goods within the State of Rajasthan and as tax paid, that cannot make the present transaction as transaction of tax paid goods.

In view of the above reasons, I do not find any illegality in the order passed by the Tax Board dated 1.5.2002. Therefore, the revision petition is dismissed.

(PRAKASH TATIA),J.

mlt.